

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE G. BAKER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Tuskegee, AL

*Docket No. 00-1227; Submitted on the Record;
Issued March 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on June 29, 1999.

On June 29, 1999 appellant, then a 41-year-old nursing assistant, filed a claim for traumatic injury (Form CA-1) alleging that on that date she felt abdominal pain in her left side and back as a result of lifting a patient. Appellant noted that she had had a hysterectomy in November 1998 and was restricted to lifting no more than 25 pounds.

By letter dated August 27, 1999, the employing establishment stated that appellant had abdominal surgery on November 21, 1998, that she returned to regular duty on January 25, 1999 and was placed on light duty with a lifting restriction. The employing establishment noted that appellant's light duty was ordered by a physician who was not her treating physician. It also noted that on June 29, 1999 appellant "sustained an aggravation to a preexisting condition while assisting with lifting a patient." Appellant was then reassigned to the Environmental Management Service.

By letter dated October 5, 1999, the Office of Workers' Compensation Programs advised appellant that the information she had submitted was insufficient to establish that she sustained an injury as alleged. The Office requested that appellant submit medical records pertaining to her condition including dates of examination and treatment, a history of injury given by her to her physician, results of all x-rays and laboratory tests, diagnosis and clinical course of treatment followed, and her physician's opinion supported by a medical explanation as to how the work incident caused or aggravated her claimed injury.

In a medical report dated April 15, 1999 and received by the Office on October 10, 1999, a doctor noted that appellant was restricted from lifting more than 40 pounds.

In a medical report dated June 28, 1999, Dr. Burnestine Page Taylor, Board-certified in family practice, stated that appellant had been under her care since that day and that she could not engage in any heavy lifting.

In a medical report dated September 30, 1999 and received by the Office on October 7, 1999, Dr. Wesley H. Barry, Jr., a Board-certified surgeon, stated that results of appellant's magnetic resonance imaging (MRI) scan "actually refuted the findings of the previous computerized tomography scan and was essentially normal." He then cancelled appellant's surgery and noted that he was "not certain as to the etiology of this (abdominal) pain."

By decision dated November 16, 1999, the Office denied appellant's claim. The Office stated that, although appellant established that the claimed event occurred on June 29, 1999, she did not establish that an injury resulted from that incident.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on June 29, 1999.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition, for which compensation is claimed; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

In the present case, the Office accepted that a June 29, 1999 employment incident occurred as alleged. The remaining issue is whether the alleged injury was caused by the employment incident. The causal relationship between the incident and the alleged disability and/or condition is generally established only by medical evidence.⁵ The employee must submit

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *David M. Ibarra*, 48 ECAB 218 (1996).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *See supra* note 3.

evidence containing a rationalized medical opinion based on a complete factual and medical background in support of the causal relationship.⁶ Such evidence includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the employee's injury and/or condition and the employment incident.⁷ The physician's opinion must be based on a complete factual and medical background of the claimant, must be reasonably certain and must rationally explain the relationship between the diagnosed condition and the employment incident as alleged by the claimant.⁸

In this case, appellant's medical evidence included unrationalized work restriction reports which noted various lifting restrictions. Appellant also submitted a medical report from Dr. Barry, a Board-certified surgeon, who found that appellant's MRI scan was essentially normal and that he was not certain as to the etiology of her abdominal pain. None of these reports establishes a causal relationship between appellant's condition and the June 29, 1999 work-related injury. The Office informed appellant of the deficiencies in her claim in its October 5, 1999 letter requesting medical evidence and allowed her 30 days to respond. Because appellant did not submit medical evidence, she failed to meet her burden of proof of establishing that she sustained an injury in the performance of duty on June 29, 1999, as alleged. Therefore, the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated November 16, 1999 is affirmed.⁹

Dated, Washington, DC
March 14, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁷ *Id.*

⁸ *Shirley A. Temple*, 48 ECAB 404, 407 (1997)

⁹ The Board notes that this case record contains evidence which was submitted subsequent to the Office's November 16, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).